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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 266

HUMBLE OIL & REFINING COMPANY,

Petitioner,

vs.

EDWIN K. ATWOOD et al,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The opinion of the United States Court of Appeals for the Fifth Circuit in this case is reported at 243 F. (2d) 885 (and is reprinted as Appendix "A" to the Petition for Certiorari).

In December of 1954, Respondents brought this action in the United States District Court for the Southern District of Texas, Houston Division, against Humble Oil & Refining Company, Petitioner. Respondents are Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, *non compos mentis*, by Alice B. Atwood as his next friend and conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher. There was diversity of citizenship and the necessary jurisdictional amount was involved.

As plaintiffs in this action, Respondents sought to enforce their rights to certain mineral interests in the State of Texas of a value of many millions of dollars under an unusual (typewritten) mineral lease made in September, 1933 (25 pages in length) (Tr. 55-80), and also their rights under three unusual subsidiary (typewritten) agreements between the same parties forming part of the same mineral transaction (5, 4 and 6 pages in length, respectively) (Tr. 102-7, 112-121). Not only were these unusual typewritten documents long and complicated, but the issues raised in the Complaint were many and varied. As the Court of Appeals said in its opinion (Appendix "A" to the Petition, p. 24):

> "The pleadings, the orders of the [trial] Court, and the arguments reflect that the issues involved in this case are many and varied, the amount of money sought is a very large one, the leases involved are long and complicated, and various phases of the cases have been and are being litigated in other courts, and at best a complaint of some length would be required to get all of the contentions presented by such a situation before the Court."

The Complaint as originally filed comprised 23 separate Counts, with an average of *less than two pages of the Complaint for each Count* (Tr. 11-54). That the Com-

plaint fully complied with Rule 8 of the Federal Rules appears from the following brief summary of these 23 separate *Counts*.

Count One pleaded a statutory cause of action in trespass to try title under Texas law, the entire claim comprising *only 4 lines* (exclusive of the legal description of the real estate), followed by a prayer for judgment for title to and possession of the real estate (minerals); for disclosure and discovery of a more accurate description thereof; for costs; and for general relief (Tr. 11-16).

Count Two of the Complaint, after incorporating a portion of *Count One* pursuant to Federal Rule 10(c), pleaded a claim for the reasonable rental value of the real estate *in only 10 lines*, to which was appended a 6-line prayer for judgment for such damages; for costs; and for general relief (Tr. 16).

Count Three pleaded a claim for damages under Federal Rule 8(a) and 9(g) *in only 11 lines*, followed by a 4-line prayer for judgment; for costs; and for general relief (Tr. 16-17).

Counts Four, Twelve and *Twenty* seeking declaratory judgments under Federal Rule 57 and Title 28, Sections 2201-2 of the United States Code were somewhat longer because the Code expressly requires the plaintiff in declaratory judgment cases to show that there was an "actual controversy" between the parties. The entire claim in *Count Four* was set forth in 7 numbered paragraphs, followed by a short prayer for a declaratory judgment or decree settling the alleged controversies; for costs; and for general relief (Tr. 17-21); the entire claim in *Count Twelve* was set forth in 4 pages, which included the prayer for relief (Tr. 35-9); and the entire claim in *Count Twenty* comprised 4 paragraphs, which with the prayer totalled less than 3½ pages (Tr. 48-52).

Counts Five, Seven and *Nineteen* all sought discovery from the defendant (Petitioner here). These three *Counts* were embodied in less than 3 pages of the Complaint (Tr. 21-2, 23-4, 48).

Count Six sought the recovery of actual physical minerals or their money value, and was set forth in a little more than 1 page of the Complaint (Tr. 22-3).

Count Eight was the longest *Count* in the entire pleading embodying 4 pages, together with an added page for the prayer (Tr. 24-9).

Count Nine presented a claim for an express, resulting or constructive trust, and comprised with the prayer less than 2½ pages of the Complaint (Tr. 30-2).

Counts Ten and *Eleven* sought to have the ownership of the minerals extracted from Respondents' real estate adjudicated to them as co-owners, and embodied 2 pages and 1 page, respectively (Tr. 32-5).

Count Thirteen sought specific performance, and with the prayer comprised less than 2 pages of the Complaint (Tr. 39-41).

Count Fourteen sought to remove two recorded instruments as clouds upon the title to Respondents' minerals, and was embodied in 1½ pages of the Complaint (Tr. 41-2).

Count Fifteen of the Complaint comprised 5 lines, supplemented by a prayer, and sought to quiet Respondents' title to their mineral interests (Tr. 43).

Count Sixteen claimed Respondents' royalty share of their minerals under a separate instrument; and comprised a single page of the Complaint (Tr. 43-4).

Count Seventeen sought cancellation of the mineral lease and one of the supplementary contracts, and comprised less than 2½ pages of the Complaint, including the prayer (Tr. 44-7).

Count Eighteen claimed ordinary and special damages for breach of contract, and comprised less than 1 page of the Complaint (Tr. 47).

Count Twenty-one claimed special damages under another mineral lease, and comprised less than 1 page of the Complaint, including the prayer (Tr. 52).

Count Twenty-two sought cancellation of the two mineral leases and supporting instruments, and was embodied on a single page of the Complaint, including the prayer (Tr. 53).

Count Twenty-three sought legal interest upon the moneys claimed, and comprised ½ page of the Complaint (Tr. 54).

It would be extremely difficult to state the foregoing claims more simply, concisely or directly. In fact, the entire pleading is a model for succinctness, clarity, simplicity and conciseness.

Following a pre-trial conference between counsel for the parties and the trial judge, the latter prepared a so-called "pre-trial order", which was never actually entered but in which the trial judge attempted to summarize a part at least of Respondents' claims (Tr. 163-9).

Within the time granted by the trial court for the amendment to the original Complaint, Respondents repleaded by filing three additional *Counts*, to-wit: *Counts Twenty-four, Twenty-five* and *Twenty-six*. These three additional *Counts* (Tr. 174-7) did *not* merely add "four additional

paragraphs to the already verbose and prolix complaint", as erroneously stated in the Petition (p. 5). On the contrary, these three additional *Counts* compressed all of Respondents' principal claims into four pages, using in substantial part the very language proposed by the trial judge in his so-called "pre-trial order", which embodied six pages.

After the amendment to the Complaint was filed with leave of the trial court, no further pre-trial conferences or court hearings took place. The judgment of the trial court dismissed plaintiffs' entire Complaint with prejudice (Tr. 199-201); and it was from this order that the appeal was taken to the Court of Appeals (Tr. 207-8).

The Court of Appeals correctly held that the Complaint did *not* violate Rule 8(a) of the Federal Rules. The Court said (Appendix "A", p. 21):

> "We find ourselves unable to agree with the thinking of the Court below which led it to conclude early in the proceedings that the complaint was definitely offensive to Rule 8(a) requiring 'a short and plain statement of the claim'. The Court did not amplify this conclusion, and we think that no convincing argument can be advanced that the statements in the complaint are not 'plain', *i.e.*, that they are not clear and understandable and not free of excessive embellishment.
>
> * * *
>
> . . . There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not, in our opinion, such a case." (p. 25, Appendix "A".)

This Court will not go behind the holding of the Court of Appeals that the Complaint as amended fully conformed with Rule 8(a) and (e)(1) of the Federal Rules, especially since there is no showing whatsoever in the

Petition that the Court of Appeals' holding was incorrect. The unsupported statements in the Petition that the Complaint contained an "intricate web of contingent relief, cross-references, bills of discovery, counts and paragraphs" (p. 5), and was "verbose and prolix" (p. 5), are wholly without merit. The statements in the Petition (p. 7) that "oral or written amplification of the Complaint was admittedly necessary for an intelligent grasp of its needless complexities", and that this is "tacitly admitted by the Court of Appeals" (p. 7), or that "the objects and purposes of the suit were not determinable from the face of the pleadings standing alone" without oral explanation (p. 8), and that "it would seem quite obvious that the offensive pleadings (Complaint and amendment thereto) were not of such simplicity, conciseness or directness as to reasonably comply with the requirements of Rule 8" (p. 8) are all equally without merit.

The Petition repeatedly, but erroneously, states that Respondents treated the trial court with "contemptuous silence" (p. 5) and were guilty of a "continued defiant, unrelenting and contemptuous attitude in utterly ignoring the trial judge and his order to replead" (p. 7). Again, the Petition erroneously says that Respondents were guilty of an "obdurate and contemptuous attitude . . . in utterly ignoring the trial judge and his orders" (p. 9), because "Respondents merely stood mute, and in stony silence ignored the order to replead" (p. 9, footnote).

This same charge is repeated, *e.g.*, that Respondents "stood mute" and refused to replead, which Petitioner says constituted "defiant and obstreperous" conduct (p. 11). As Petitioner puts it, (p. 12-13), "The wilful and intransigent refusal of the complainants to abide by and comply with the trial court's order to replead in conformity to the requirements of Rule 8, or, alternatively to

proffer an extenuating reason, excuse or ground for standing silent and adamant in such refusal" was "the *real* ground upon which the trial court bottomed its order of dismissal" (italics from the Petition, p. 12).

The foregoing statements are wholly unjustified. The record conclusively shows, not only that Respondents sought and obtained a pre-trial conference with the trial judge in the effort to straighten out the pleadings, but that, far from refusing to replead, they actually did replead by filing an amendment to their original Complaint which was founded upon the trial judge's proposed "pre-trial order" in that it actually used his own language in stating Respondents' claims, although the amendment was even more concise (being several pages shorter) than the trial court's statement of the same claims in his proposed "pre-trial order." (Tr. 163-9, 174-6).

In other words, far from treating the trial judge contemptuously, Respondents actually did their utmost to conform with the trial judge's proposed "pre-trial order" by courteously seeking to state Respondents' claims more simply in their amendment, and in proper legal fashion informed the trial court that Respondents were convinced that their Complaint did not violate Rule 8(a) of the Federal Rules by filing a motion squarely relying upon Rule 8(a) ten days before the order of dismissal was entered (Tr. 206). The statement in the Petition (p. 9 and footnote) that Respondents "elected to stand upon their Complaint" "for the first time in their brief before the Court of Appeals" and refused to amend is entirely untrue, as Respondents' motion (Tr. 206) conclusively shows.

JURISDICTION OF THIS COURT

Petitioner maintains (p. 2) that the question presented for review is within the scope of Rule 19(b) of the Supreme Court.

As we show in the argument below, neither has Petitioner raised nor has the Court of Appeals decided an important question of Federal law which should be settled by this Court; nor is there any showing in the Petition that the Court of Appeals has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the trial court as to call for an exercise of this Court's power of supervision.

THE QUESTION PRESENTED FOR REVIEW

The question presented for review (p. 2) has nothing to do with this appeal because the Court of Appeals did *not* hold "that the Trial Judge was without power . . . to order a repleader, unless the complaint was so prolix, verbose and repetitious as to require peremptory and final dismissal of the suit."

What the Court of Appeals actually held was that the Complaint was neither prolix, verbose nor repetitious and therefore did not violate Rule 8(a) and (e)(1) of the Federal Rules; and that therefore under Rule 41 the trial court had no power or discretion to dismiss Respondents' Complaint with prejudice.

Stated more succinctly, "the question presented for review" by Petitioner is not a question which has anything to do with this appeal nor with the Court of Appeals' true holding therein, but purports to raise instead an abstract question of Federal law which has nothing to do

with this appeal, and which at most constitutes a mere ground for an attack upon the *language* of the Court of Appeals, not upon the substantive merits of its decision.

Even if the question which is presented by Petitioner correctly construed the Court of Appeals' holding, nevertheless the answer to this question is so obviously in the negative as not to warrant this Court's time and attention thereto, as we show in the argument below.

ARGUMENT

The question presented by the Petitioner for review might more accurately be re-stated as follows:

> Does a trial court have power under Rule 41(b) of the Federal Rules to dismiss with prejudice a cause of action based upon a complaint which is neither prolix, verbose nor repetitious and which in no other manner fails to comply with Rule 8(a) and (e)(1)?

In other words, may a trial judge dismiss with prejudice a complainant's action where the complaint is simple, concise and direct and contains a short and plain statement of the claim showing that the Plaintiff is entitled to relief, merely because the trial judge, upon his own voluntary motion (Tr. 200), prefers to have the complaint amended in some other form to suit his preferences?

There can be no doubt as to the answer to the question presented to this Court for review, whether in the form in which it is stated in the Petition or in this answering brief above. The Court of Appeals, recognizing that brevity in pleadings is desirable so that time and printing costs may be "minimized", nevertheless recognized that "the right and the duty of a litigant to present his demands through counsel of his own choosing and in a style and form of expression which reflect the attorney's honest effort to present the claims according to his own notions of their merits and their strong and weak points" are of greater importance, and that "in the functioning of the judicial process, the role of the advocate ranks in dignity and importance to that of the judge" (Appendix "A", p. 2).

This is another way of saying that a trial judge should decide cases, and not draft pleadings for litigants in his court.

Petitioner takes a different view. Apparently it is Petitioner's conception (p. 14) that unless litigants and their counsel shall comply with every whim and caprice of the trial judge as to their manner of pleading, the result is that "the burden of bringing the pleading into focus with the Rule is shifted from the shoulders of the litigant and his counsel to the shoulders of the trial judge", and that this "is not only repugnant to every basic conception upon which the Rules of Procedure are predicated, but invites only chaos and confusion in the trial courts, rather than orderly dispatch of the business before them" (Petition p. 14).

In other words, it is Petitioner's conception that unless the litigants permit the trial judge to re-write their pleadings for them, there will be "chaos and confusion" in the trial courts, and that the trial judge will have to shoulder "the burden of bringing the pleading into focus", *i.e.*, to make it conform with Rule 8.

Actually, it is Petitioner's conception which would create "chaos and confusion" in the trial courts, for if the trial judge is voluntarily "on his own motion" to assume "the burden" of needlessly compelling litigants who fully comply (as the question presented by Petitioner assumes) with Rule 8 of the Federal Rules, then surely there will be "chaos and confusion" in the trial courts, which can only be avoided by adherence to the Court of Appeals' holding in this case.

Practically the whole of Petitioner's argument is based upon the false assumption that Respondents, as plaintiffs in the trial court, were contemptuous of the trial judge's efforts to compel them to re-plead, even though their pleading was entirely proper, by standing mute after once amending their Complaint in a straightforward and sincere

effort to satisfy the trial judge, as is shown by the fact that Respondents actually adopted in their amendment to the Complaint the trial judge's proposed form of suggested pleading as outlined in his proposed "pre-trial order."

It is transparent that all the charges about Respondents' alleged "continued, defiant, unrelenting and contemptuous attitude", which Petitioner calls "obdurate and contemptuous", "willful and intransigent", "unsavory and offensive", all of which charges are without the slightest support in and are directly contrary to the record, are without any justification. The Court of Appeals thrice pointed in its opinion to the fact that Petitioner, far from objecting to the Complaint on the ground of verbosity, moved for its *amplification* rather than for its abbreviation (App. "A", p. 18, 19, 23). We quote (p. 23):

> "Humble evidently did not find these offensive elements in the complaint because it moved for amplification of portions of it rather than for abbreviation."

As for Respondents' good faith in the trial court, the Court of Appeals' opinion shows that Respondents, as soon as they received the proposed "pre-trial order", complied with the trial court's request for a repleader, at the same time showing the trial court that Respondents' three additional *Counts* "state as simply, clearly and concisely as possible the claims of plaintiffs as referred to in your [the trial Court's] proposed Pre-trial Order." (App. "A", p. 20.)

CONCLUSION

In the effort to show that the Court of Appeals' decision in this case would have an "appalling" effect upon the "future application of the pertinent Rules of Procedure in other District Courts", and thus to give some dignity to this Petition, Petitioner argues (p. 11) that the Court of Appeals has "implied" that the trial judge is "without power, under Rule 8, to order a repleader unless the offensive pleadings are so verbose, prolix and repetitious as to require peremptory and final dismissal" of the entire litigation with prejudice.

As we have said above, even if this were one of the "implications" of the Court of Appeals' opinion, which is a quarrel with the *language* of the opinion and *not* its substance, it would be the adoption of Petitioner's theory which would be truly "appalling". For it plainly appears from the Petition that it is based upon the contention that a trial judge shall have the power, upon his own voluntary motion (as in the case at bar), to compel litigants to replead their causes of action, even though the litigant's pleadings fully comply with Rule 8 of the Federal Rules, and the opposing party seeks their amplification, not their abreviation.

We have shown above, however, that this question has nothing to do with the decision in the case at bar. All that was decided by the Court of Appeals was that Respondents' Complaint, as amended, in this case did comply with Rule 8, for the reason that it was simple, concise and direct and contained a short and plain statement of Respondents' claims showing that they were entitled to relief, as the Court of Appeals' opinion expressly holds. No contrary showing is contained in the Petition.

In the face of this holding, is this Court going to decide an abstract question of procedure, merely because Petitioner finds it was raised by "implication" in the Court of Appeals' opinion?

It is concluded that the decision and judgment of the Court of Appeals was correct and in accordance with the Federal Rules of Civil Procedure, and accordingly that the Petition for Certiorari should be denied.

Respectfully submitted,

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